

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 9th day of October, 1996

Served October 9, 1996

- - - - -  
Joint Application of :  
 :  
UNITED AIR LINES, INC. :  
and :  
SAUDI ARABIAN AIRLINES CORPORATION : Docket OST 96-1668  
 :  
for exemptions and statements of :  
authorization :  
- - - - -

ORDER GRANTING EXEMPTIONS AND STATEMENTS OF AUTHORIZATION

SUMMARY

By this order, we grant exemptions to Saudi Arabian Airlines Corporation<sup>1</sup> (Saudia), to serve Los Angeles, California, as an additional U.S. point on its Saudi Arabia-U.S. services, and to United Air Lines, Inc., to serve the New York-Dhahran/Jeddah/ Riyadh, Saudi Arabia, markets<sup>2</sup>. Additionally, we grant statements of authorization to Saudia and United for: (1) Saudia to conduct blocked-space/code-share services, on behalf of United, in the New York-Dhahran/Jeddah/Riyadh markets; and (2) United to conduct blocked-space/code-share services for Saudia's Saudi Arabia-Los Angeles traffic, between New York and Los Angeles.

<sup>1</sup> Saudia holds various Department authorities including operating rights to conduct combination operations to the U.S. coterminal points New York, New York/Washington, D.C./Orlando, Florida, and all-cargo operations to New York and three additional U.S. points ( see Orders 88-12-13 and 95-9-22). Saudia's Department authorities remain effective under the automatic extension provisions of the Administrative Procedure Act (APA) of federal law (5 U.S.C. 558(c), as implemented by 14 CFR Part 377), pending Department action on its timely-filed applications for renewal of these authorities.

<sup>2</sup> United holds Department authority to conduct operations between Saudi Arabia and Los Angeles, San Francisco, Oakland and San Jose, California/Seattle-Tacoma, Washington/Chicago-Rockford, Illinois/Washington, D.C./Baltimore, Maryland ( see Order 91-2-5.) United's authorities in these markets remain effective under the APA, pending Department action on its timely-filed application for renewal of these authorities.

## BACKGROUND

The Annexes to the 1993 U.S.-Saudi Arabian Air Transport Agreement (Agreement), permit U.S. carriers to serve Jeddah, Riyadh and Dhahran to/from any point or points in the United States, and Saudi carriers to serve New York, Washington, Orlando and two additional U.S. points, to/from any point or points in Saudi Arabia.<sup>3</sup> Further, the Annexes provide that no more than two carriers of each Party may conduct a maximum of eight weekly roundtrip combination operations and that no more than two carriers of each Party may conduct a maximum of six weekly roundtrip all-cargo flights. The Annexes also provide that designated carriers may provide all or a part of their services under blocked-space arrangements with carriers of the other Party, subject to U.S. and Saudi governmental approvals.

## APPLICATION

By application of August 27, 1996, Saudia and United requested the authorities noted above. In support, the applicants stated that the requests are encompassed by the Agreement; that the U.S.-Saudi Arabia market is currently dominated by third-country carriers and that grant here would improve service options; that the Saudi Government will not require the United States to use its second combination carrier designation under the proposal, and that it has agreed to allow United's blocked-space/code-share services without charging those frequencies against the bilaterally-agreed U.S.-carrier frequency limitations; and that grant, therefore, would not preclude another U.S. carrier from operating services with its own aircraft using available frequencies, nor would it preclude existing U.S.-carrier services from expanding frequencies within the bilateral limits.

## RESPONSIVE PLEADINGS

Delta Air Lines, Inc., answered on September 11, 1996, and opposed approval of the request until the Saudi Government permits it to conduct code-share services to that country with third-country carriers. Delta stated that the Saudi Government has refused its request for such code-share services, thereby establishing a failure of reciprocity that warrants disapproval here; that Delta's proposed services represent the only economically feasible way for it to serve Saudi Arabia; that grant of the instant request would allow United and Saudia to dominate the market and would be inconsistent with international aviation policy; and that Department precedent supports its position to deny or defer consideration here until competitive entry can be obtained for other U.S.-carrier code-share alliances.

---

<sup>3</sup> By Diplomatic Note of February 24, 1996, the Government of Saudi Arabia notified the United States that it had chosen Los Angeles and Chicago, Illinois, as the two additional U.S. points.

On September 20, 1996, United and Saudia replied, stating that they have requested rights encompassed by the Agreement, whereas Delta's code-share request with third-country carriers is extrabilateral.

#### DECISION

We have decided to grant Saudia's and United's requests for exemptions and statements of authorization.<sup>4</sup> We find that our action is consistent with the public interest and with Department policy, and furthers our international aviation objectives.

We note that all of the authorities requested here by the applicants are encompassed by the Annexes to the Agreement, which, as noted above, specifically provide for the type of blocked-space arrangement proposed by the applicants.<sup>5</sup> We further note that Saudia is properly licensed and designated by its homeland to conduct new operations to Los Angeles. In addition to providing benefits to the public by increasing U.S.-Saudi Arabian service options, this authority will result in enhancement of the U.S. presence in the Saudi Arabia market. Specifically, the U.S. will gain an additional carrier in the market, which is currently being served directly by only one U.S. carrier.<sup>6</sup>

While we recognize Delta's desire to conduct U.S.-Saudi Arabia services under its code-share arrangement with its alliance partners, we also note that this kind of code-share operation is not encompassed by the Agreement. Nonetheless, we are sensitive to Delta's concerns and are disappointed that the Saudi Government has not approved the arrangement which would facilitate Delta's entry into the market. We have made the Saudi Government aware of our concerns regarding U.S.- carrier requests to serve the Saudi market

---

<sup>4</sup> We find that Saudia and United are financially and operationally qualified to provide the proposed services. See Order 88-12-13 for Saudia and Order 92-3-48 for United.

<sup>5</sup> The Annexes to the U.S.-Saudi Agreement expired by their terms on March 31, 1996; however, each Government is continuing to authorize services by carriers of the other Party as if the Annexes were in full force and effect. On July 13, 1996, the United States sent a diplomatic note to the Saudi Government proposing to extend the Annexes for one year. We are awaiting the Saudi Government's response.

<sup>6</sup> The joint applicants have represented that United's blocked-space operations will not count against U.S.-carrier capacity and designation limits. Based on those representations, the future addition of another U.S. carrier in the market, and/or an increase in the number of bilateral frequencies used by the carrier now in the market, would not be precluded by our action here. We will take reciprocal action here regarding Saudia's capacity limitations. That is, we will not charge Saudia's Los Angeles frequencies, as operated by United between New York and Los Angeles under the blocked-space agreement, against Saudi carriers' allowable bilateral frequencies.

under code-share arrangements with third-country carriers, and we will continue intergovernmental efforts to resolve the issue. However, we do not find that the public interest warrants our withholding the authority requested here by Saudia and United.

Finally, we note that the applicants requested that their request be granted for two years. We find, at this time, that it is consistent with Department policy and the public interest to grant the authorities for one year.

In view of the above, we find that grant of the authority described here is consistent with the public interest and that our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We grant Saudi Arabian Airlines Corporation (Saudia) an exemption from the provisions of 49 U.S.C. section 41301 to conduct scheduled foreign air transportation of persons, property and mail between a point or points in Saudi Arabia, and Los Angeles, California. The authority granted here is limited to operations conducted by United Air Lines, Inc. (United), as described in paragraph 4, below;

2. We grant United an exemption from the provisions of 49 U.S.C. section 41101 to conduct scheduled foreign air transportation of persons, property and mail between New York, New York, and Dhahran, Jeddah and Riyadh, Saudi Arabia. The authority granted here is limited to operations conducted by Saudia, as noted in ordering paragraph 3, below;

3. We grant Saudia a statement of authorization under Part 212 of the Department's regulations in order to conduct operations on behalf of United, under a blocked-space/code-share arrangement, as described in the text of this order, in the New York, New York-Dhahran/Jeddah/Riyadh, Saudi Arabia, markets;

4. We grant United a statement of authorization under Part 207 of the Department's regulations to conduct operations on behalf of Saudia under a blocked-space/code-share arrangement in the Saudi Arabia-Los Angeles market, as described in the text of this order, between New York and Los Angeles;

5. The authorities granted in ordering paragraphs 1 and 2, above, are effective for one year from the issue date of this order. The authorities granted in ordering paragraphs 3 and 4, above, are effective for one year from issue date of this order, or until dissolution of the Saudia/United blocked-space agreements, whichever occurs earlier;

6. In the conduct of the services authorized above, Saudia and United must adhere to the applicable terms, conditions and limitations of their foreign air carrier permit and Certificate of Public Convenience and Necessity, respectively;

7. The blocked-space/code-share operations authorized here must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservations systems and elsewhere, that the carrier selling such transportation accept all obligations established in the contract of carriage with the passenger ( i.e., the ticket), and that the operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;

8. We may amend, modify or revoke this authority at any time and without hearing;

9. We dismiss, without prejudice, the joint application in Docket OST 96-1668, to the extent that the joint applicants requested authority for a period of two years; and

10. We will serve a copy of this order on Saudia, United, Delta Air Lines, Inc., the Ambassador of Saudi Arabia in Washington, D.C., the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUMNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)